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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91171281
Party	Defendant Jarrow Formulas, Inc.
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Attachments	Opposition to Opposer's Motion Requesting Entry of Protective Order.pdf ( 4 pages )(39147 bytes )

PomWonderful LLC	)	Opposition (Parent) No.: 91171281
	)	
Opposer,	)	Marks and Related (Consolidated) Proceedings:
	)	Opp. No. 91171281 (Parent) re POM <sup>AMAZING</sup>
v.	)	Opp. No. 91191283 re POME GREAT
	)	Opp. No. 91171284 re POMESYNERGY
Jarrow Formulas, Inc.,	)	Opp. No. 91173117 re POMOPTIMIZER
	)	Opp. No. 91173118 re POMGUARD
	)	Opp. No. 91186414 re POMEZOTIC
Applicant.	)	Opp. No. 91191995 re PRICKLYPOM
	)	Opp. No. 91194226 re POM and POM
	)	
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In its Motion Requesting Entry of Opposer’s Proposed Protective Order, D.E. # 62, PomWonderful LLC (“PomWonderful”), through its counsel, Roll Law Group P.C. (“RLG”), devotes much time to casting aspersions and questioning the motives of Jarrow Formulas, Inc. (“JFI”). Unfortunately for PomWonderful and RLG, none of this can deny the existence of the good faith, genuine disagreements between the parties regarding (1) what is an appropriate definition of “in-house counsel?”; and (2) what confidentiality designations should the protective order provide?

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ensure proper handling of JFI's designated information and materials. *See* D.E. # 61. Having set forth its position, JFI now addresses PomWonderful's papers.

## **I. POMWONDERFUL'S ACCUSATIONS DISTRACT FROM THE ISSUES**

The parties' discussions, correspondence, and draft orders evidenced a fundamental disagreement on what is an appropriate definition of "in-house counsel." As explained in its own papers, JFI believes that "in-house counsel" should be defined in terms of affiliation, and should look beyond formal legal relationships to the substantive issue of common control. PomWonderful has made clear that it believes ownership to be the keystone inquiry. Regrettably, PomWonderful attempts to support its position with an imagined parade of horrors, accusing JFI of "gamesmanship," of making "a calculated effort to thwart POM's efforts" in taking discovery, and of being "more than disinterested" in resolving this dispute. That PomWonderful and RLG can dream up ways in which JFI might abuse process should not be used to distract the Board's from the good faith basis underlying this dispute.

## **II. POMWONDERFUL MISSTATES AND MISCHARACTERIZES JFI'S POSITION**

PomWonderful's motion contains several misstatements and mischaracterizations that must be addressed. First, JFI's proposed protective order would not exclude in-house counsel and affiliated parties from viewing information designated "Confidential." *Compare* D.E. # 61 at Exhibit A, § 1(g) *with* D.E. # 62 at 2. In-house counsel and affiliated parties would only be barred from viewing Trade Secret/Commercially Sensitive information. Second, PomWonderful wrongly reduces JFI's position to "because the Roll Law Group is located in the same building as its clients, it should be held to a strict standard governing confidentiality." *Id.* at 7. While this is a relevant fact, JFI has made clear that, overall, the issue is one of affiliation or control, and that PomWonderful's focus on formal ownership or employment is misplaced.

Third, PomWonderful suggests that JFI acted in bad faith by opting to file separate papers, rather than filing a joint motion with PomWonderful. *Id.* at 9. PomWonderful prepared a joint motion for JFI's review, in substantially the same form as the motion JFI now opposes. As JFI's counsel explained by phone, after reviewing the draft, JFI decided it could not join a motion wherein PomWonderful put more emphasis on JFI's alleged "bad faith" than on the merits of its position. Rather, JFI's counsel explained, JFI would file its own papers and thus reserve the right to address PomWonderful's mischaracterizations. To suggest that JFI somehow duped or took advantage of PomWonderful in this respect is disingenuous.

### **III. CONCLUSION**

JFI regrets that the issues underlying this dispute have become mired in misstatements and mischaracterizations, and looks forward to presenting its position to the Board in the upcoming telephone conference.

Respectfully submitted,

/s/ David Ewen

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October 9, 2012

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 9, 2012, the foregoing document was submitted for filing to the Trademark Trial and Appeal Board through the ESTTA system and a copy of this paper has been served upon all parties by first class mail, postage pre-paid, and email, at the address shown below:

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